**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929**

**WP(C).No. 24939 of 2007(R)**

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**OS.261/2000 of MUNSIFF COURT, TIRUR**

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**PETITIONER:**

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**ABDULLAKUTTY, S/O.PALAKKAL HASSANKUTTY, P.O.VALANCHERY, MALAPPURAM DISTRICT.**

**BY ADV. SRI.K.RAMACHANDRAN**
**SMT.R.MEERA**

**RESPONDENTS:**

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1. **UNNEETHU ALIAS SHAJDO, S/O.VEERANKUTTY, KALATHIPARAMBIL HOUSE, TIRUR TALUK - KATTIPARITHY AMSOM, DESOM, P.O.VALANCHERY, MALAPPURAM DISTRICT.**

2. **NABEESU, D/O.VEERANKUTTY, -DO-**

3. **KADEEJA UMMA, W/O.VEERANKUTTY, -DO-**

**BY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**M.N.KRISHNAN, J**

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**W.P.(C) No.24939 OF 2007**

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**Dated this the 17th day of August 2007**

**JUDGMENT**

This writ petition is filed to set aside the order in I.A.No.224 of 2007 in O.S.No.261 of 2000. It was an application filed for setting aside the Comissioner's plan and report. The brief facts of the case would reveal that formerly a Commissioner was appointed and thereafter there was some non-co-operation on the part of the plaintiff and he moved an application for remitting the Commissioner's report and plan, which was dismissed by the court below and that was confirmed by this court on the ground that no steps had been taken to set aside the Commissioner's plan and report. The suit was dismissed for default and later it was restored. Thereafter the present petition is filed for setting aside the Commissioner's plan and report.

2. The suit is one for injunction and the demarcation of the property may be necessary for a proper disposal of the case. It is seen from the order of the court below that it is not satisfied that there are errors at this stage to set aside the Commissioner's plan and report. I do not find any reason to interfere with the order at this stage. But I make it clear that the writ

petitioner must be permitted to adduce evidence in support of his contention against the Commissioner's report at the trial stage and if he is able to convince and the court also finds that the present materials are not sufficient for the proper disposal of the case, the court should not hesitate to issue a Commission at that stage for getting particulars so as to have a proper disposal of the case. Reserving that right of the petitioner, writ petition is disposed of.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**